

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

04 11412

FILED
CLERKS OFFICE
2004 JUN 22 PM 12:01

CHARLES LANGONE, as FUND MANAGER) of the NEW ENGLAND TEAMSTERS AND) TRUCKING INDUSTRY PENSION FUND) MAGISTRATE JUDGE <u>Bawler</u>)	U.S. DISTRICT COURT DISTRICT OF MASS
Plaintiff,)	C.A. No. <u>56816</u>
v.)	RECEIPT # <u>150</u>
LILY TRANSPORTATION CORP. d/b/a) LILY TRANSPORT, INC. and/or d/b/a) LILY TRANSPORT LINES, INC.)	AMOUNT \$ <u>150</u>
Defendant,)	SUMMONS ISSUED <u>YES</u>
	LOCAL RULE 4.1
	WAIVER FORM
	MCF ISSUED
	BY DPTY. CLK, <u>FDM</u>
	DATE <u>06/22/04</u>

COMPLAINT

1. This is an action under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001, *et seq.* brought on behalf of the New England Teamsters and Trucking Industry Pension Fund ("Pension Fund") for damages and injunctive relief arising from unpaid and delinquent contributions.
2. This court has jurisdiction pursuant to 29 U.S.C. §1132(e)(1) and venue lies in this district pursuant to 29 U.S.C. §1132(e)(2).
3. Plaintiff, Charles Langone, is the Fund Manager of the Pension Fund and is a "fiduciary" within the meaning of Section 502(a)(3) of ERISA, 29 U.S.C. §1132(a)(3). The Pension Fund is a "multi-employer plan" within the meaning of Section 3(37)(A) of ERISA, 29 U.S.C. §1002(37)(A) and is an "employee benefit plan" or "plan" within the meaning of Section 3(3) of ERISA, 29 U.S.C., §1002(3). The Pension Fund has its principal office at and is administered from 535 Boylston Street, Boston, Massachusetts.

4. Defendant Lily Transport Corp. is an employer incorporated in the State of Massachusetts with a place of business in Needham, Massachusetts. Defendant is an "employer" within the meaning of 29 U.S.C. §1002(5) and an employer in an industry affecting commerce within the meaning of 29 U.S.C. §142(1) and §152(2), (6) and (7).

5. Upon Information and belief, Lily Transport Corp. was doing business as or is an alter ego of Lily Transport, Inc. and/or Lily Transport Lines, Inc.

6. Teamsters Local Union No. 170 is a "labor organization" within the meaning of 29 U.S.C. §152(5).

7. At all material times, defendant has been obligated by the terms of one or more collective bargaining agreements between defendant and Teamsters Local Union No. 170 and by the terms of an Agreement and Declaration of Trust to which defendant is bound to make contributions on behalf of certain employees to the Pension Fund.

8. Defendant has failed to make required contributions to the Pension Fund in violation of Section 515 of ERISA, 29 U.S.C. §1145.

WHEREFORE, plaintiff demands that judgment enter in accordance with Section 502 of ERISA, 29 U.S.C. §1132(g)(2):

1. Awarding the Pension Fund the following amounts:

- a. the unpaid contributions;
- b. interest on those contributions from the date the payment was due;
- c. liquidated damages in an amount equal to the greater of interest on the unpaid contributions or 20% of the unpaid contributions;
- d. all costs and reasonable attorney's fees incurred by the Pension Fund in connection with this action; and

2. Permanently enjoining the defendant from violating its obligations under the terms of its collective bargaining agreements with Teamsters Local Union No. 170 and the Agreement and Declaration of Trust to make timely contributions and reports to the Pension Fund; and

3. Ordering such other and further relief as this court may deem just and proper.

Dated: June 21, 2004

Respectfully submitted,

Catherine M. Campbell
BBO #549397
FEINBERG, CAMPBELL & ZACK. P.C.
177 Milk Street
Boston, MA 02109
(617) 338-1976

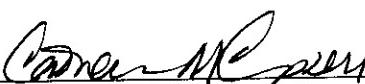


Attorney for plaintiff,
Charles Langone, Fund Manager

CERTIFICATE OF SERVICE

I, Catherine M. Campbell, hereby certify that I caused a copy of the foregoing to be mailed this date by certified mail, return receipt requested, to the United States Secretaries of Labor and Treasury.

Date: June 21, 2004



Catherine M. Campbell

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED

CLERK'S OFFICE

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Charles Langone, Fund Manager v.
Lily Transportation Corp.

2004 JUN 22 P 12:00

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- | | |
|--|---|
| <input type="checkbox"/> I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
<input checked="" type="checkbox"/> II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730,
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

<input type="checkbox"/> III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.

<input type="checkbox"/> IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660,
690, 810, 861-865, 870, 871, 875, 900.

<input type="checkbox"/> V. 150, 152, 153. | U.S. DISTRICT COURT
DISTRICT OF MASS |
|--|---|
- *Also complete AO 120 or AO 121
for patent, trademark or copyright cases

04 11418 DFW

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

 YES NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

 YES NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

 YES NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES NO

- A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

- B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Catherine M. CampbellADDRESS Feinberg, Campbell & Zack, PC, 177 Milk Street, Boston, MA 02109TELEPHONE NO. (617) 338-1976

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Charles Langone, as Fund Manager of
the New England Teamsters and Trucking
Industry Pension Fund

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Lily Transport ^{2004 JUN 22 P.D./b/a}
Lily Transport, Inc. and/or d/b/a
Lily Transport Lines, Inc. ^{COURT}
County of Residence of First Listed Plaintiff Suffolk
^(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Catherine M. Campbell
Feinberg, Campbell & Zack, P.C.
177 Milk Street, Boston, MA 02109
(617) 338-1976

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assauili, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle Product Liability <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Aviation Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	OTHER STATUTES
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habens Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (13951D) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g))
			FEDERAL TAX SUITS	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

(PLACE AN "X" IN ONE BOX ONLY)

V. ORIGIN

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court

- 4 Reinstated or 5 (specify) Reopened

Transferred from another district

- 6 Multidistrict Litigation

Appeal to District
Judge from Magistrate
Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.)
Do not cite jurisdictional statutes unless diversity.)

Action by Pension Fund under ERISA 29 U.S.C. Sec. 1001 et seq. to collect delinquent contributions.

VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION
COMPLAINT: UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions):
IF ANY

JUDGE
E

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Catherine M. Campbell

June 21, 2004

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE